

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT RUKUNGIRI
CASE NO: HCT-05-CR-SC-140 OF 2005

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

NIWAGABA STANLEY :::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. JUSTICE RUBBY AWERI-OPIO

J U D G M E N T:-

The accused in this case is called Niwagaba Stanley. He is indicted on the charge of defilement contrary to section 129 (1) of the Penal Code Act. The particulars of the indictment alleged that the accused on 2nd December 2002 at 6.00a.m. at Rwerere village in Kanungu District did unlawfully carnally know Nyirikiza Grace, a girl under the age of 18 years.

The background facts of the case were that on 2/12/2002 at 6.00p.m. at Rwerere village in Kanungu District, Nyirikiza Grace hereinafter referred to as the victim then aged 13 years was sent to inform a relative about her uncle's death. The victim went following the accused who was well known

to her and heading to the same direction. The accused pretended as if he was going to urinate. When the victim reached where he was, the accused grabbed her and took her to a nearby bush and forcefully had sexual intercourse with her whereupon she felt a lot of pain. After the sexual intercourse the victim ran back home while crying and informed her aunt, Aidah Tumukirize. The matter was reported to the local council chairman who forwarded it to the police post whereupon the accused was arrested and charged accordingly. The victim was medically examined and found to have signs of penetration.

When the accused was arraigned, he denied the charge. Ultimately, the prosecution was required to lead evidence to prove all the essential elements of the offence in order to secure a conviction. The essential elements of the offence of defilement are:

- (1) that the girl victim as a girl below 18 years at the time of the alleged offence;
- (2) that she experienced unlawful sexual intercourse; and
- (3) that it was the accused who participated in the unlawful sexual intercourse.

See **Dhamuzingu Nathan Vs Uganda, Court of Appeal Criminal Appeal No. 70 of 2000** (unreported).

All the above ingredients must be proved by the prosecution beyond all reasonable doubt. The accused does not bear the burden of proving his innocence even when he relies on the defence of alibi. He is presumed to be innocent until proved guilty. However weak his defence may be, the accused is entitled to a conviction only on the strength of the prosecution evidence. After all he is not obliged to put up any defence. He may even decide to reserve his silence: See Section 73 (2) of the Trial on Indictments Act and **Basoga Patrick Vs Uganda; Court of Appeal Criminal Appeal No. 42 of 2002** (unreported).

In the instant case the prosecution relied on the evidence of Nyirakiza Grace (PW4) who was victim in the case together with that of Aidah Tumukirize (PW1) who was the victim's aunt to whom the victim made the first report that she had been ravished by the accused. The prosecution further relied on the evidence of Bagumira Yosam (PW2), and Tumusiime Frank (PW3) who testified that on the material time they had lost a relative. They told court that the victim was sent to inform other relatives of the

funeral arrangements. The victim later came back and told them that the accused had forced her into sexual intercourse. They concluded that the victim came back crying and was in a depressed condition. The matter was reported to the local authorities whereupon the accused was arrested.

Lastly the prosecution relied on the medical examination report of the victim where she was examined by Dr Birungi on 2/12/2002 from Kanungu Hospital. This medical evidence was admitted during the preliminary hearing under Section 66 of the Trial on Indictments Act. Also admitted under the same memorandum was the medical examination of the accused by Dr Sebudde wherein the mental status of the accused was found to be normal.

The accused on his part made a sworn defence of total denial. He even denied being related to the prosecution witnesses.

With regard to the first ingredient as to whether the girl victim was below 18 years old, the prosecution relied on the victim's evidence. She told court that she was now 16 years old. The medical examination report of the victim established that on 2/12/2002 the victim was 13 years old. PW1 and

PW2 who were the victim's close relatives told court that the victim was between 15 – 16 years now. The defence did not contest this ingredient. After considering the medical evidence and the evidence of the victim's relatives I do not have any doubts that the victim was a girl below 18 years of age.

As to whether the victim experienced sexual intercourse, the prosecution relied on the victim's evidence. She testified that on the fateful day she was grabbed by a man who took her to a nearby bush and forced her into sexual intercourse whereupon she felt a lot of pain. After the incident, she ran back home crying and informed Aidah Tumukirize (PW1) who was her aunt. That evidence was corroborated by Aidah Tumukirize (PW1) who testified that on the fateful day the victim came back while crying. Upon interrogation she revealed that the accused had defiled her. The victim was bleeding. Her white blouse was soaked with mud and she had grass all over her head. The above pieces of evidence were further corroborated by the medical examination report of the victim. That report established that the victim had signs of penetration. The victim's hymen was ruptured recently. She also had injuries and inflammations around her private parts which were consistent with force sexually used. Lastly corroboration was

also in the form of distressed condition of the victim. PW1 told court that the victim was shabby. She had blood behind her legs and she was crying. The victim herself testified that because of the assault she had to abandon her journey where she was going to inform her relatives of the burial of her uncle. Therefore there was overwhelming evidence to prove beyond all reasonable doubt that the victim had experienced sexual intercourse.

The last ingredient in whether it was the accused who had participated in the unlawful sexual intercourse with the victim.

It is trite law that the victim's evidence is very vital in proving the act of sexual intercourse and the identification of her assailant.

In the instant case the victim Nyirikiza Grace (PW4) testified that on the fateful morning she was going to inform her relatives of the burial arrangement of their uncle. On her way she met the accused and they proceeded together. The accused later grabbed her and took her to a nearby bush where he had forceful sexual intercourse with her. The sexual intercourse took place between 6.00a.m. to 8.00a.m. in the morning.

The accused denied the offence and relied on the total denial and alibi. The victim in this case appeared to have told court the truth. She testified that after the sexual assault which lasted very long, she could not continue with her journey of informing their relatives of the burial arrangements. Her testimony was corroborated by the evidence of PW1, PW2 and PW3 who confirmed that the victim had been sent to inform relatives of the burial of a close relative. They testified that the accused was among those who had kept vigil the previous night. After the incident the victim returned home and reported the incident to Aidah Tumukirize (PW1) who was her aunt. This evidence further corroborated the victim's evidence. See **Emuroni Francis Vs Uganda, Criminal Appeal No. 2 of 2000** (Court of Appeal unreported).

Moreover the accused was very well known to the victim who was his relative. The offence took place during broad day light. There was certainly no mistaken identity. The defence of alibi and total denial were merely afterthoughts which were meant to confuse the court. The victim clearly identified the accused at the scene to the extent that the accused could not challenge. Instead the accused told lies that he was not even related to the victim and other prosecution witnesses and yet it was clear

that he was a dear relative who had been with the complainants at the funeral of their relative. For the above reasons I do agree with both assessors that the prosecution has proved this case beyond all reasonable doubt. I find the accused guilty as charged and convict him accordingly without any hesitation.

RUBBY AWERI OPIO

JUDGE

14/9/2005.

15/9/2005:-

Accused present.

Twinomuhwezi for the state.

Ndimbirwe present for the accused on state brief.

Judgment read in open court.

Twinomuhwezi:-

He has no previous record. This offence is very serious. The convict was a relative of the victim. He has been on remand since 6/12/2002 up-to-date. I pray for a deterrent sentence.

Ndimbirwe:-

An offence against a relative invites stigma. The convict is already serving punishment both by the country punishment and relatives. That punishment is rough. He regrets the act. He has been in custody since 2002. He is only 20 years old. He was just 17 that time. This is the age of high blood. Given chance he can reform. So I pray for leniency.

SENTECE:-

This is a very serious offence which entails maximum of death sentence. The offence was committed against a relative. It is true offence against relative invites stigma. So he is already serving punishment from the relatives and the country.

At the time of this offence the convict was 20 years according to medical evidence while the victim was 13 years old. The circumstances under which the offence was committed were grave. The convict ambushed the victim in a lonely place whereby he could have done anything with her after ravishing her.

For the above reasons this court will take a very serious view of the offence. The same stigma will also translate to the victim because it is abominable to have sexual intercourse with a relative.

This court will take consideration of the fact that the accused is still young. He should be given a chance to reform and live a useful life.

For that matter he is sentenced to eight (8) years Imprisonment. The sentence takes consideration that he has been in custody since 2002 otherwise he should have deserved 12 years imprisonment.

Right of Appeal explained.

RUBBY AWERI OPIO

JUDGE

15/9/2005.